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EXAMINER

TAKELE, MESEKER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JESSE BOUDREAU, THOMAS MURPHY,
and ALAN PANEZIC

Appeal 2016-006445
Application 12/172,037
Technology Center 2100

Before JOHNNY A. KUMAR, JOHN D. HAMANN, and
STEVEN M. AMUNDSON, *Administrative Patent Judges*.

KUMAR, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from a Final Rejection of claims 2–24. Final Act. 1. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

Exemplary Claim

Exemplary claim 5 under appeal reads as follows:

5. A computerized method comprising:

presenting, on a user interface displayed by a server, one or more administration scenarios for a mobile device, the user interface displaying the one or more administration scenarios corresponding to a plurality of administration parameters;

receiving, via the user interface, a user selection of at least one of the one or more administration scenarios displayed on the user interface, wherein the administration scenarios comprise setting a password, forgetting a password, misplacing a mobile device, losing a mobile device, and managing modes of operation of the mobile device;

identifying, without interaction from the user, one or more of the administration parameters to implement the selected at least one administration scenario, the one or more administration parameters are operable to configure the mobile device for the selected at least one administration scenario; and

transmitting the one or more administration parameters to the mobile device.

Rejection

Claims 2–24 are rejected under 35 U.S.C. § 103 (a) as being unpatentable over Parker (US 7,006,820 B1, Feb. 28, 2006) in view of

Kenney (US 2005/0186954 A1, Aug. 25, 2005) and in further in view of Shashikumar (US 2006/059539 A1, Mar. 16, 2006). Final Act. 4–20.¹

Appellants' Contentions

1. Appellants contend that the Examiner erred in rejecting claim 5 under 35 U.S.C. § 103(a) because:

Parker does not disclose that one or more administrative scenarios corresponding to a plurality of administrative parameters are *displayed on a user interface of a server* and the parameters corresponding to a user-selected scenario are transmitted to a mobile device. . . .

Parker does not even disclose that the *server has a user interface or even a display* of any kind. . . .

. . . .

. . . *Parker does not teach displaying one or more user administration scenarios on a user interface of the server.*

App. Br. 8, 12 (emphasis added).

2. Appellants also contend that the Examiner erred in rejecting claim 5 under 35 U.S.C. § 103(a) because:

The abstract of Parker discloses “**automatically** selecting conditions and parameters (such as scheduled times) for wireless programming of selected mobile devices” and “**automatically** performing wireless programming of those mobile devices using the selected conditions and parameters.” According to dictionary.com, the general definition of automatic is “having the capability of starting, operating, moving, etc., independently” or “(of a device, mechanism, etc.) able to activate, move, or regulate itself.” Thus, the use of the term “automatically” implies without user intervention. In contrast, claim 5 specifically recites “receiving, via the user interface, **a user selection** of at least one of the one or more

¹ Separate patentability is not argued for claims 2–4 and 6–24. Except for our ultimate decision, claims 2–4 and 6–24 are not discussed further herein.

administration scenarios displayed on the user interface.”
There is nothing in abstract of Parker that discloses the claimed element.

Reply Br. 2–3 (footnote omitted).

Issues on Appeal

Did the Examiner err in rejecting claim 5 as being obvious?

ANALYSIS

We have reviewed the Examiner’s rejection in light of Appellants’ arguments (Appeal Brief and Reply Brief) that the Examiner has erred. We disagree with Appellants’ conclusions. Except as noted below, we adopt as our own (1) the findings and reasons set forth by the Examiner in the action from which this appeal is taken and (2) the reasons set forth by the Examiner in the Examiner’s Answer in response to Appellants’ Appeal Brief. We concur with the conclusions reached by the Examiner. We highlight the following additional points.

As to Appellants’ above contention 1, we disagree. The Examiner finds, and we agree:

Parker in col., 9 line 49-59, abstract and Figure 2, further disclose, select conditions and parameters (such as scheduled times) for wireless programming of selected mobile devices which are selected automatically, but if the update server is unable to find an acceptable schedule (that is, one that is acceptable to both the server portion 140 and optionally to the customer 122), *it presents a signal to the administrator 142* and receives a suggested schedule from the administrator 142. So the examiner interpret *present signal as displaying* and receiving a suggested schedule from an admin is receiving, see col., 9 line 49-59.

Ans. 4–5 (emphasis added).

The Examiner also finds, and we agree, Parker teaches “(server) administrator is an individual or other entity responsible for administering, scheduling, and performing wireless programming of the mobile device” (Ans. 3–4) and, thus, the present signal would be displayed for the administrator (Ans. 7).

As to Appellants’ above contention 2, in the Reply Brief, Appellants present for the first time a new argument against the rejection of claim 5. In the absence of a showing of good cause by Appellants, we decline to consider an argument raised for the first time in the Reply Brief. This is because, as the Examiner has not been provided a chance to respond, and in the absence of a showing of good cause by Appellants, these arguments would be deemed waived. *See* 37 C.F.R. § 41.41(b)(2) (2012); *In re Hyatt*, 211 F.3d 1367, 1373 (Fed. Cir. 2000) (noting that an argument not first raised in the brief to the Board is waived on appeal); *Ex parte Nakashima*, 93 USPQ2d 1834, 1837 (BPAI 2010) (explaining that arguments and evidence not timely presented in the Principal Brief, will not be considered when filed in a Reply Brief, absent a showing of good cause explaining why the argument could not have been presented in the Principal Brief); *Ex parte Borden*, 93 USPQ2d 1473, 1477 (BPAI 2010) (informative) (“Properly interpreted, the Rules do not require the Board to take up a belated argument that has not been addressed by the Examiner, absent a showing of good cause.”). Appellants have provided this record with no such showing of good cause.

Thus, we are not persuaded of Examiner error. Therefore, we sustain the Examiner’s § 103 rejection of claims 2–24.

DECISION

The Examiner's rejection of claims 2–24 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED